

# Heirs of Alexander Ferguson

Extracts from Chancery suit in Franklin County, Virginia, 1889-026, Henry Board etc. vs. Heirs of Alexander Ferguson etc. [<http://www.virginiamemory.com/collections/chancery/>]

## The Cause

The suit was filed on 22 Feb 1875 by plaintiffs Henry Board and Eli Ferguson, grandsons of Alexander Ferguson, whose will (pp. 227-230) was signed on 29 Oct 1817 and admitted to probate in Franklin County on 5 Jan 1818. The petition states that the land devised by Alexander to his son Eli was fraudulently acquired by others and names the heirs of Alexander and others who should be made party to the suit (pp. 6-11 and p. 2, which should follow p. 11; the bottom half of p. 2 is torn away).

In his will, Alexander devised two tracts to sons Eli and Daniel, "one known by the name of the old House tract and the other by the name of the Scotchmans tract with the 25 acres taken off the tract given my son Thomas." Alexander specified that in the event Eli died without issue, the land devised to him should revert to Alexander's other heirs but that this reversion should not occur until after the death of Eli's widow.

Eli and Daniel divided the two tracts, with Eli taking the portion on both sides of Gills Creek. He conveyed this land and "considerable personal property" to John Starkey on 31 May 1827 in trust to secure a debt to his brother Stephen Ferguson (deed is on pp. 114-116). Eli died later that year (see Miscellanea, below).

## The land

The land devised to Eli by his father comprised three separate parcels by the time of the suit:

Land to Stephen Ferguson, claimed by Mark Perdue: after Eli's death, trustee John Starkey sold Eli's land on the south side of Gills Creek to Stephen Ferguson but no deed of conveyance could be found by the plaintiffs. Two of Stephen's heirs — Ann, the wife of J.S. Shaon, and Wm M. Ferguson — conveyed their interest in the land to Mark Perdue on 13 Jan 1867 (deed pp. 171-172). The other heir, Sarah J. Dillon, retained her interest and she and her husband Henry petitioned to be added as plaintiffs to the suit (p. 12-13).

Land to Thomas Ferguson, claimed by George Divers: Another part of Eli's land, 59 acres lying on the north side of Gills Creek, was sold by Starkey to Eli's brother Thomas on 6 Aug 1839. A survey was completed for Thomas's heirs on 31 Oct 1850 showing 224 acres total on the north side of Gills Creek after the lot conveyed by Thomas to his son Thaddeus had been laid off (pp. 137-138). Starkey was said to have then sold the

59 acres in contention to George Divers but the plaintiffs could find no deed on record and it isn't clear how he would have been entitled to dispose of the land. Divers claimed Thomas's land as alienee of Thomas's heirs-at-law, but only the part originally devised to Eli was subject to the suit.

Land to Eli's widow, claimed by Mark Perdue: the rest of Eli's land was left in possession of his widow Nancy during her lifetime in accordance with Alexander Ferguson's will. She held the land until her death in 1864 or 1865 and Perdue claimed it by virtue of the 1827 deed of trust as alienee of Stephen Ferguson's heirs (pp. 16-18, answer of Mark Perdue).

### Arguments and outcome

Although a number of depositions dealt with the legitimacy of the 1827 deed of trust and the circumstances under which it was obtained from Eli, two legal issues were at the forefront of communications between the respective attorneys.

Fee tail vs. fee simple: The attorney for defendant Mark Perdue argued that by an Act of Assembly in effect when Alexander's will was executed, the land devised to Eli Ferguson in fee tail converted to fee simple, i.e., he owned it outright instead of conditionally. Plaintiffs' attorneys countered that settled case law was unequivocal about carrying out a testator's intentions and that it was clear by the wording of Alexander's devise he intended the land to revert to his other heirs should Eli die without leaving children.

Statute of limitations: The defendant's attorney argued that the time lapse made the suit moot. Plaintiff's attorneys countered that the will clearly said Alexander's heirs were not to take possession of the land until after the death of Eli's widow. Immediately following Nancy Ferguson's death, plaintiff Eli Ferguson "took possession of the part that had been held by her, and held it down until the 1st of January in this year [1877], when he was forcibly ousted by defendant Mark Perdue, after this suit was instituted." Further, that the statute did not commence running on the other two parcels held by Mark Perdue and George Divers until 1 Jan 1869 (pp. 65-68, statement by attorney for plaintiff).

Outcome: The Court found in favor of the plaintiffs in a decree entered on 15 Nov 1878, affirming that the land reverted to Alexander Ferguson's other heirs following the death of Eli's widow. As the land could not be equitably partitioned, two commissioners were appointed to sell it at public auction (pp. 38-41). A survey completed on 17 Aug 1881 showed 175 acres and 2 roods lying on both sides of Gills Creek (pp. 86-87) but the land was advertised as "between 200 and 300 acres" adjoining the lands of George Divers, Eleanor Ferguson, Wythe H. Perdue, Henry Dillon and Custer and wife (p. 217).

It was sold on 29 Aug 1881 to highest bidder John H. Ferguson (p. 140; also see Miscellanea section) who paid in installments till the full purchase price was met in Oct 1884 (p. 43). A commissioner had been appointed in May 1883 to identify all the heirs and determine the share to which each was entitled (p. 33).

By the time the decree for distribution was entered on 29 Oct 1886 (pp. 28-31), three of the principals had died: plaintiff Henry Board was reported to be deceased in May 1883 (p. 33); plaintiff Eli Ferguson in Oct 1886 (p. 29); and defendant Mark Perdue in Oct 1886 (p. 31).

### Heirs of Alexander Ferguson

Alexander's will names all of his children except for Alexander Jr. His heirs are enumerated in the original petition (pp. 2, 8-11) and in the Oct 1886 deposition of Silas W. Chambers (pp. 143-147, hereinafter as "SWC"), who married Alexander's great-granddaughter Arena. Silas's deposition provides some details either not contained in or different from the petition and other sources, i.e., the commissioners' reports on heirs (pp. 91-95, hereinafter as "Heirs report") and distributees (pp. 97-100, hereinafter as "Distributees report"), etc. The compiled information below was extracted from the above records, with some additional information added from other sources as specified.

Alexander had ten children but son Eli left no heirs and there were no distributions earmarked for those children said to have been long gone from Virginia and about whom nothing further was known, i.e., Patsy Donahue; Sucky Short; and Daniel Ferguson. This left six children whose heirs divided a 1/6 share: Polly Board, i.e., her son Henry, now deceased; Elizabeth Smith; Thomas Ferguson; Alexander Ferguson; Stephen Ferguson; and Noah Ferguson, i.e., son Eli, now deceased. The Distributees report is only a determination of what each of the named heirs was entitled to (those marked with an \* receiving a share); there are no receipts to indicate which of them laid claim to it.

Alexander's children are shown in the order they appeared in the Heir's report but they are ordered differently in the petition and in Silas Chambers's deposition so this is not an accurate reflection of their birth order.

1st - Patsey Ferguson, married Patrick Donahue and removed to the West a great many years ago and has not been heard from for more than thirty years. As Martha Donaho in Alexander's will.

2nd - Sucky Ferguson, married Thomas Short, moved West over forty years ago, both died in Tennessee leaving children unknown. As Susanna Short in Alexander's will. [see Miscellanea, below: Alexander A. Short, Smith County, Tennessee].

3rd - Polly Ferguson, as "Mary Board, deceased" in her father's will. Husband reported to be Henry Board (Heirs report) but marriage record shows it as James (5). Son Henry was one of the plaintiffs; there were other children who had moved West many years previously and died leaving children unknown.

- Henry Board, plaintiff, died on 17 Jul 1880 (1); the first eight children listed below were attributed to Polly Board in the Heirs report but all twelve were named as Henry's heirs in the Distributees report and in the court record that referenced his death (p. 33):
  - Eli Board\*
  - Willis Board\*
  - Benjamin Board\*
  - Thaddeus Board\*
  - Catherine Board\*, husband is shown as Alfred N. Beckner but this was her son, and the Catherine named as Alfred's wife was probably a daughter as Alfred's wife was named Nancy (5); Alfred and Catherine Beckner, ages 5 and 3, respectively, were shown in the 1850 Franklin Co. household of Jacob Beckner, which also included Joel, age 29. The marriage record for Catherine Sr. names her husband as Jacob (5) but her son Alfred's marriage record shows it as Joel
  - Nancy Board\*, married William J. Meade, her given name comes from the 1880 Franklin Co. census in which her parents were part of the household
  - Sallie Board\*, married Jacob Sink; first married to Laban Childress (5)
  - Stephen Board\*
  - Robert Board\*
  - Wiley Board\*
  - Polly Board\*, married Joseph Horsley; only Polly was named so she may have been widowed; husband's given name comes from their marriage record (5)
  - Jubal Board\*

4th - Daniel Ferguson, moved to the West about forty years ago, not heard from since.

5th - Elizabeth Ferguson, married David William Smith, both dead leaving the following children (information varies by source); the last 3 daughters were named in the petition as daughters of Elizabeth Smith Poindexter, said to have moved West years before, but their marriage records show that they were that Elizabeth's sisters, not her daughters:

- Stephen F. Smith, died without issue

- John (SWC) or Thomas Smith (petition); a summons to Thomas Smith could not be executed in Floyd Co., he was said by the server to be living in Montgomery Co. but he could not be found there (pp. 155-158)
- Samuel Smith, moved away from Virginia years ago
- William H. Smith, moved away from Virginia years ago
- Fannie Smith, married Peter Booth, moved West years ago
- Polly Smith, married Kemuel Gilbert, both deceased, unknown children
- Elizabeth Smith, married Thomas Poindexter, husband's given name from daughter Nancy's death certificate (8); both deceased with the following issue\*; residences come from SWC:
  - Nancy Poindexter (widow), married George W. English, husband's given name comes from their marriage record (5)
  - Mary Ann Poindexter, married John Starkey, Franklin Co.
  - Stephen F. Poindexter, Franklin Co.
  - Thomas Poindexter, Danville
  - Cephas Poindexter, Franklin Co.
  - John Poindexter, Franklin Co.
  - Babe Poindexter, Franklin Co.
- Nancy Smith, married Andrew Holland, both died leaving some children who moved away from Virginia many years previously, known heirs\* named below; Nancy (birth name blank) is shown in the Heirs report and SWC as a child of Elizabeth Smith Poindexter but in the petition and in the Distributees report as a child of Elizabeth Ferguson Smith and her marriage record (2) confirms the latter; a John and Mary Holland were named in a general summons in Feb 1875 (p. 153) and on the same date a commissioner said he believed John and *Nancy* Holland were living out of state (p. 169); the petition also names a John (deceased) and Nancy Holland on the page following Andrew Holland's heirs but these already included a John W. Holland who was obviously not deceased, so it isn't clear where exactly these extra Hollands belong:
  - Christopher C. Holland, summons served in Danville (p. 154)
  - William alias John W. Holland (p. 30), summons served in Danville (p. 154)
  - Julia Harriet Holland, married Joseph L. Mathews; full given names come from their marriage record (5)
- Martha D. "Patsy" Smith, married Thomas J. Holland (5), she died in Montgomery Co., Mo. on 3 Aug 1882 (9)
- Sarah Parker Smith, married Wright Smith (5), she died in Montgomery Co., Mo. on 12 May 1880 (9)
- Julia A. Smith, married John Craghead (5), she died in Callaway Co., Mo. on 29 Oct 1879 (9)

6th - Thomas Ferguson, died in May 1850 (3) leaving the following issue:

- Josiah Ferguson, died on 27 Aug 1878 (6) leaving the following children\*:
  - John Card. Ferguson
  - Charlotte Ferguson, married Benjamin G. Garrett, full first name of husband from marriage record (5)
  - Stephen Ferguson
  - Benjamin Ferguson, non-resident
- Louisa Ferguson, married Melchisadeck Earley aka "Deck"; moved West and both deceased (SWC), children\* unknown
- Dogie Ferguson\*; "Hunnicutt, Barren Co. KY" (SWC)
- Alexander Ferguson, died leaving one child\*; still living on 20 Apr 1875 when a summons was served on him in Franklin Co. (pp. 161-162)
  - Jubal E. Ferguson, left the state about 3 years ago [c1883] (SWC)
- Thaddeus C.S. Ferguson, died, widow\* Anne and children\* in Lynchburg (SWC); Thaddeus was still living in Feb 1875 when the suit was filed
- Armistead Ferguson, died in Calif. 5-6 years ago [c1880/1], children\* unknown (SWC)
- Polly Taylor, husband shown variously as George or John Law but marriage record shows it as John (2), both deceased; one child\*:
  - George W. Law, died in 1873, left two children (4)
- Julia Ferguson, married Christopher Taylor and died leaving the following children:
  - John Otey Taylor, died recently, one child\*; residence Lynchburg (p. 170); John married his second cousin, Mary, the daughter of Thomas Ferguson and granddaughter of Alexander Ferguson Jr. (5)
    - John Boothroyd Taylor; as Boothroy Taylor (p. 31), as John B. Taylor in his father's 1880 census household
  - Rhoda A. "Mitt" Taylor\*, married John W. Price; Rhoda's full given name from her marriage record (5); summons served in Franklin Co. (p. 161)
  - Emma Chester Taylor\*, married James W. Helm, full given names from their marriage record (5); "near Locust Grove, Va." (SWC) and summons served in Montgomery Co. (p. 83)
  - Zachary Taylor, believed to be living in Lynchburg when suit began (p. 170, commissioner's deposition) but not named in Distributees report
  - Sallie Taylor, married Gideon Kean\*, died without heirs but Gideon still living (SWC)

7th - Alexander Ferguson who died leaving the following issue:

- Lorenzo Ferguson, non-resident and not heard from for more than 30 years

- Otey Ferguson, died leaving the following issue:
  - Ellen Ferguson\*, married Alex Asberry; "Roanoke" (SWC)
  - Alexander Ferguson, died 20 years ago in Missouri, left children\* (SWC)
  - Sarah Ferguson, married [?] Frailin, both dead, with 3 children\*, names unknown
  - Daniel Ferguson; "County seat, Calloway Co. Missouri" (SWC)
  - Arena Ferguson\*, married Silas W. Chambers
  - Otey Ferguson, died, one child, name and whereabouts unknown
- Mary Ferguson, married Anthony Simmons, both deceased with the following issue:
  - Sarepta Simmons\*, married John G. Meadows
  - Sparrel Simmons\*
  - Lemuel Simmons, died leaving two children:
    - Ella Simmons\*, married William P. Burkholder
    - Samuel Simmons\*, non-resident
- Elizabeth Ferguson\* (a widow), married John Starkey, husband's given name from their marriage record (2)
- Nancy Ferguson, married William Smith, husband's given name from their marriage record (2); non-resident many years and nothing known of her
- Sallie Ferguson, married John Childress, husband's given name from their marriage record (2); moved to Arkansas about 45 years ago, both deceased
- Mildred "Milly" Ferguson, married John Divers, husband's given name from their marriage record (2); both dead, lived in the West
- Thomas Ferguson, died leaving issue:
  - Maria Ferguson\*, married Charles W. Statham; "Lynchburg" (SWC)
  - Mary Boothroyd Ferguson (7), appeared only as "wife of Jno O Taylor"; died leaving one or two children (SWC)
    - John Boothroyd Taylor (see entry under John Otey Taylor)
    - Leonard Lyne, child from Mary's first marriage, not named in record but referenced by SWC
  - Calvin Wood Ferguson, deceased, child or children names unknown (SWC only); see Miscellanea section

8th - Stephen Ferguson, died on 9 Oct 1853 (6), left widow Ellen C.\* and children:

- Mark Ferguson, died without issue
- Sarah J. Ferguson\*, married Henry C. Dillon
- Mary P. Ferguson, married Jeffrey Granville Robertson and they are somewhere in the West; husband's given name from their marriage (5) and census records (Montgomery Co., Mo.)

- Carroll Ferguson, non-resident (Heirs report only)
- Elizabeth Ferguson, married Peter L. Holland, husband's given name from daughter Mary's marriage record (5); died with the following issue:
  - Thaddeus H. Holland
  - John H. Holland
  - Hewitt Holland
  - Lewis Holland
  - Timothy Holland
  - William or Buck (SWC) Holland
  - Letitia Frances "Fannie" Holland, married Sparrel Dudley; as Letitia F. in marriage record (5)
  - Mary C. Holland, married William Dillon
  - Ann Holland, married Gwinn T. Dudley, husband's given name from their marriage record (5); non-resident
  - Sarah B. Holland, married William T. English, husband's given name from their marriage record (5)
  - Eliza G. Holland, given name from her marriage record (5), married Henry Thomas Smith
  - Flora A. Holland, married Rufus J. W. Housman, given names from their marriage record (5)
- Eliza Ann Ferguson, married James S. Shaon; annotated "Mark Perdue admr\* as assignee" in Distributees report (p. 99)
- James Ferguson, non-resident
- William Mayberry Ferguson, non-resident; annotated "Mark Perdue admr\* as assignee" in Distributees report (p. 99)
- Stephen Ferguson; living in Bedford Co. (SWC)
- Green Ferguson, non-resident, not heard from in years and presumed dead

9th - Noah Ferguson, deceased, left several children (SWC) but only Eli is named; Noah conveyed his interest in Alex Ferguson's estate to Eli by deed dated 14 Jan 1865 in Franklin Co. (p. 9):

- Eli Ferguson, plaintiff, deceased by Oct 1886 (p. 29), children\*:
  - Stephen F. Ferguson
  - Thomas A. Ferguson
  - Theophilus Nash Ferguson, first name from his death record (8)
  - Noah Burton Ferguson, full given name from his death record (8)
  - Mahala Jane "Puss" Ferguson, given name from her marriage record (5), married William Trent

- Mary Frances Ferguson, middle name from her death record (8), married James Robertson
- Eliza Ann Ferguson, married to Whirley or Whorley Basham and Samuel H. Houser; deceased; full given names and correct spouse names for Eliza and her children come from their marriage records (5):
  - Frances "Fanny" Basham, married Griffin D. Jeter
  - Mahala Ann Basham, married Benjamin F. Black, husband's given name erroneously shown as William in Distributees report
  - William Henry Basham
  - Amanda Josephine Houser, married William H. Basham
  - Thomas D. Houser

## Other sources

- 1: "War of 1812 Pension Application Files Index, 1812-1815," Ancestry.com.
- 2: "Franklin County, Virginia, Marriage Bond Index, 1786-1858," Ancestry.com.
- 3: "U.S. Federal Census Mortality Schedules Index," Ancestry.com.
- 4: G.W. Law, age 19, wrote a letter in Jan 1887 to plaintiff's attorneys from Jonesburg, Montgomery Co., Missouri, saying that he and his (unnamed) younger brother, age 15, were the only living children of G.W. Law (p. 119). They were the *grandsons* of Polly Law, who was widowed by 1850 and shared a household with her son George W. from 1850 (Franklin Co., Va.) to 1870 (Callaway Co., Mo.). George was a sheriff, killed in the line of duty in 1873 (Findagrave #88109314) and in 1880 his orphaned sons Geo. W. and Robert (as L.B.) were enumerated in the Montgomery County, Mo. household of Rebecca Holland.
- 5: "Virginia, Select Marriages, 1785-1940," Ancestry.com.
- 6: "Virginia, Deaths and Burials Index, 1853-1917," Ancestry.com.
- 7: Findagrave #64704157, gravestone inscribed "Mary Boothroyd, wife of John Otey Taylor and daughter of Thomas Ferguson." Mary, her first husband Leonard H. Lyne and her son Leonard were part of her father's 1860 Campbell Co., Va. household.
- 8: "Virginia, Death Records, 1912-2014," Ancestry.com.
- 9: "Missouri, Newspaper Death Index, 1822-1994," Ancestry.com; *Montgomery City Standard* and *Callaway Weekly Gazette*.

## Miscellanea

Alexander A. Short: Alexander A. Short, "about the age of 29", gave a deposition in Smith County, Tennessee on 19 Jan 1830 in a Chancery suit by Henry Childress, Admr of Eli Ferguson, with Abraham Childress acting as Henry's agent (Franklin County, 1835-014, Admr of Eli Ferguson vs. Stephen Ferguson & John Starkey, p. 17).

Calvin Wood Ferguson: Calvin was identified by Silas Chambers but no other reference to him has been found in this record. A Chancery suit in Lynchburg City, 1891-070 (images not available as of this writing) probably belongs to him (his heirs): William O. Owen, Rucker & Barnett, Thomas R. Statham etc. vs. Calvin W. Ferguson etc., with Lyne and Taylor among the indexed names; Calvin's daughter Lelia married her first cousin, Thomas R. Statham, son of Calvin's sister Maria. A memorial marker naming Calvin, who died in 1868 (Findagrave #64387898) names four other children of Thomas and Elizabeth Ferguson, the first three of whom died in childhood: Charles Beaumont, 1824; Thomas Franklin, 1830; Elizabeth Carolina, 1834; and William Mitchell Ferguson, 1857 in Nashville, Tenn.

Eli Ferguson, son of Alexander Sr., died before 3 Dec 1827 when one of his administrators, Henry Childress, initiated the first of several Chancery suits regarding his estate (Franklin County, 1835-014, Admr of Eli Ferguson vs. Stephen Ferguson & John Starkey, p. 3).

John H. Ferguson, who purchased Eli Ferguson's land when it was sold by order of the Court, was the son of Ellen, Stephen Ferguson's widow, and born since Stephen's death (p. 89, deposition of John H. Ferguson). He was not named as one of Stephen's heirs.

Nancy Ferguson, widow of Eli, was the daughter of Robert Childress and sister of Henry and Abraham Childress (Chancery suit in Franklin County, 1836-024, Admr of Eli Ferguson, etc. vs. John Starkey, etc., pp. 7, 36-37).

Stephen Ferguson: Ellen C. Ferguson was Stephen's second wife. He had a number of children by his first wife; by Ellen he had four children, one of whom died in infancy. The three who survived were Eliza A., wife of James S. Shaon; William M. Ferguson; and Sarah J., wife of Henry Dillon. Only these three were entitled to the estate Stephen possessed at his death since he had already provided for his older children (p. 17, answer of defendant Mark Perdue). William M. Ferguson's wife was shown as Sarough J. on the deed from Stephen's heirs to Mark Perdue (pp. 171-172).